Private Property Can Be a "Public Place" under the Indecent Exposure Statute

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Categories : Crimes and Elements

Tagged as : court of appeals, indecent exposure, private property, public place, pugh

Date : December 3, 2015

Several recent news reports have involved people removing their clothes in their own homes or on their own property, but in view of neighbors or passers-by. For example, Charlotte's "naked neighbor" controversy is discussed here, while Rowan County's back yard bandit case is discussed here. Are people who expose their genitals to public view while on their own property in a "public place" as required by the indecent exposure statute, G.S. 14-190.9? Yes, ruled the court of appeals this week.

Facts. The case is State v. Pugh. It arose one afternoon when a woman and her young daughter saw a neighbor masturbating in front of his garage. According to the court, the garage "was directly off a public road and . . . was in full view from the street" as well as from the woman's house. Some additional information about the layout of the area is available in this *Fayetteville Observer* article.

Procedural history. The defendant was charged with felony indecent exposure in the presence of a minor under G.S. 14-190.9(a1). He was convicted, sentenced to probation and required to register as a sex offender, and appealed.

Defendant's argument. On appeal, he argued that "because he was on his own property, he was not in a 'public place.'" Therefore, he contended, his motion to dismiss should have been granted and his objection to the jury instructions given by the trial judge should have been sustained.

Ruling. The court of appeals disagreed, ruling that a public place is any place "viewable from any location open to the view of the public at large." Applying that principle to the facts of the case, "Defendant was standing on his own property, but his exposure was in a 'public place' because he was easily visible from the public road, from the [driveway he shared with the woman] and from his neighbor's home."

The court relied primarily on *State v. Fusco*, 136 N.C. App. 268 (1999), where it upheld the indecent exposure conviction of a man who was masturbating on a creek embankment within view of nearby homeowners. *Fusco* does contain language similar to the language used to define "public place" in *Pugh*, though the facts were quite different. The embankment doesn't seem to have been the defendant's own property, and the embankment was a place where children frequently played.

The court also cited *State v. King*, 268 N.C. 711 (1966) (holding that the defendant's car was a "public place" when it was parked in a business's parking lot). Perhaps because it is unpublished, the court did not cite *State v. Williams*, 190 N.C. App. 676 (2008) (unpublished) (affirming an inmate's conviction of indecent exposure where he exposed himself using "a food slot visible from the outside walkway" because "a reasonable probability existed that members of the general public [present in the jail] . . . might have witnessed defendant expose himself").

Comment. *Pugh* helps to clarify the law, but it doesn't answer every possible question about what counts as a "public place." For example, the defendant in *Pugh* was not inside his house at the time of the exposure. I suggested in this prior post that being inside doesn't preclude prosecution, and the test applied in *Pugh* supports that conclusion, but *Pugh* doesn't squarely address the issue. Furthermore, the opinion doesn't address whether a person may lawfully

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expose his or her genitals on a portion of his or her property that is visible to neighbors but not from any public street or other public property. The clues the *Pugh* opinion gives on that issue point in different directions. One the one hand, a neighbor's home is not open to "the public at large." On the other, the *Pugh* court affirmed in part because the defendant was visible "from his neighbor's home." [See the comments below concerning statutory changes effective December 1, 2015, that are pertinent to this post.]

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